IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Civil Writ Petition No. 394 of 2004 (S/S)

Smt. Kanan Tyagi …… Petitioner

Versus

State of Uttaranchal
Through Secretary Secondary Education
Uttaranchal, Dehradun & others…… Respondents

Date of decision: 13th August, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant

- Whether the order/judgment should be sent to the respondents for reporting ? (yes)

- Whether the reporters be allowed to see the judgment ?
(yes)

Reserved Judgment

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Smt. Kanan Tyagi ……. Petitioner

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Through Secretary Secondary Education
Uttaranchal, Dehradun & others……. Respondents

Mr. Rakesh Thapliyal, learned counsel for the petitioner.
Mr. Manoj Tiwari, learned counsel for respondent No. 5.
Mr. Subhash Upadhyaya, learned Brief Holder for the State.

Hon'ble P.C. Pant, J.

This petition has been moved under Article 226 of the Constitution of India for writ in the nature of certiorari for quashing the order dated 23.03.2004 passed by the District Education Officer, Nainital and also for mandamus directing the respondent No. 5 to hand over the charge of Lecturer of Sociology to the petitioner.

2) Brief facts of the case are that petitioner is an Assistant Teacher in L.T. Grade working since 1979 in G.P.P. Arya Kanya Inter College, Ram Nagar, Nainital and possesses degree of Double M.A. in the subjects of Sociology and Economices. On 30th June 2002, Smt. Veena Sharma (respondent No. 5) was promoted as Lecturer in Sociology being the senior most Teacher in L.T. Grade. On her retirement, the petitioner being the next senior most L.T. Grade Teacher was to be promoted against the vacancy falling on the retirement of respondent No. 5. Smt. Veena Sharma (respondent No. 5) initially opted for her retirement at the age of 58 years and as such should have retired on 30.06.2004 but the Government Order dated 17.02.1999 permits a teacher to opt for change of age of retirement on completion of 60 years before one year from the date of

superannuation. The respondent No. 5 opted for change but she should have done son by the end of June 2003 as she was to retire on 30.06.2004. Since the change of option was not within time as such the District Education Officer / District Inspector of Schools (respondent No. 3) by means of letter dated 19.11.2003 rejected the change of option. Accordingly, on 27.12.2003 Management of the Institution directed the respondent No. 5 to hand over the charge of her office to the petitioner by 30.06.2004. However, the District Inspector of Schools by means of order dated 23.03.2004 (impugned order) reviewed his earlier decision and allowed the charge of option to be exercised and permitted the respondent No. 5 to continue till she attains the age of 60 years. By means of this writ petition the petitioner had challenged the impugned order. As to the locus stand of the petitioner it has been stated that since she is deprived of her promotion as such she has a right to challenge the impugned order.

3) Respondent Nos. 2 and 3 had filed a joint counter affidavit and defended the impugned order on the ground that on the representations dated 28.11.2003, 30.11.2003, 26.01.2004 and 04.02.2004 all by the respondent No. 5, respondent No. 3 was made to convince that actually the change of option was made by her on 21st February 2003 and due to the delay in forwarding on the part of respondent No. 4, the Management Committee, respondent No. 5 cannot made to suffer. In para 9 of the counter affidavit it has been stated that the earlier order dated 19.11.2003 was passed by the District Education Officer as the true facts were not in his knowledge.

4) Respondent No. 5 has filed her separate counter affidavit in which she has stated that she is completing the age of 60 years on 09.10.2005. Smt. Veena Sharma (respondent No. 5) further states in her counter affidavit that her letter dated 21.02.2003 for change of option was to be forwarded through the Management Committee of the College to the District Inspector of Schools /

District Education Officer but the same held up by the Management Committee, who transmitted it only after she reminded it to the Manager of the College in July 2003. The respondent No. 5 has accused the petitioner of mobilizing her connection with the Management in causing delay in sending the letter of change of option to the respondent No. 3. She has also challenged the locus of the petitioner in the matter in dispute. She has admitted that she sent representations after alleged rejection of her change of option in the month of November 2003, January 2004 and February 2004.

5) In the rejoinder affidavit the petitioner has reiterated earlier averments and further stated that the application dated 21.02.2003 is fabricated and subsequently prepared by the respondent No. 5.

6) I heard learned counsel for the parties at length and perused the affidavits and paper annexed thereto.

7) There are twofold questions for consideration before this Court:

i) Whether, the change of option was wrongly accepted by the respondent No. 3?and

ii) Whether the petitioner has a locus standi in the maintaining the writ petition?

8) Before coming to the merits of the case it is proper to look into the preliminary objection relating to the locus standi of the petitioner. Had the respondent No. 5 retired on 30.06.2004 after completion of 58 years of age, the petitioner being the senior most L.T. Grade Teacher and Post Graduate in Sociology (apart from Economics) would have been considered for promotion to the post of Lecturer. As such the petitioner’s case is that she is deprived of consideration for promotion in the year 2004. Therefore, in view of these facts it cannot be said that petitioner has no case on account of locus. In my opinion, the writ petition filed by the petitioner is maintainable.

9) Now I come to the merits of case. First of all, the Government Order dated 17th February 1999 is the most relevant document to be perused. A copy of said Government Order is Annexure- 1 to the writ petition. it gives right to the teachers to submit the change of option before one year of the first of July of the next year when on closure of the session the teacher has to retire on completion of the age of superannuation i.e. 58 years. As such this Government Order nowhere says that the change of option should reach to the District Education Officer before one year. Now next important document on the record is letter dated 19.11.2003 by which respondent No. 3 (District Education Officer / District Inspectors of Schools) has informed the Manager of the College that since the change of option has been sent in November 2003 as such the same cannot be considered. Here it is pertinent to mention that the District Education Officer nowhere says that the teacher (respondent No. 5) has exercised option in November 2003 rather it is addressed to the Manager and it says "आप द्वारा सम्बन्धित प्रवक्ता का सेवा निवृत्ति विकल्प पत्र माह नवम्बर 2003 के अन्तिम सप्ताह में कार्यालय प्रेषित किये गये हैं।" "You have sent the option of retirement of the concerned Lecturer in the last week of month of November 2003"). It will be unjust in the circumstances to make respondent No. 5 suffer on account of delay on the part of Management in forwarding the change of option to the respondent No. 3. Therefore, this Court is of the view that on representations of the teacher (respondent No. 5) the District Education Officer has rightly passed the impugned order dated 22.03.2004 (copy Annexure- 4 to writ petition) whereby the change of option of respondent No. 5 has been counter singed by the District Inspector of School after its acceptance.

10) Mr. Rakesh Thapliyal, learned counsel for the petitioner vehemently argued that the application purporting to the dated 21.02.2003 filed with the counter affidavits of the respondents is not a genuine document. Had it been only with the counter affidavit of respondent No. 5, it could have been stated that she

might have prepared it later. But Annexure C.A. 1 to the counter affidavit of the respondent Nos. 2 and 3 which is at paper No. 11 with the counter affidavit clearly shows that the document is not forged one. On behalf of petitioner it is submitted that copy of the letter filed by respondent No. 5 with her counter affidavit which is at page 6-A (of her counter affidavit) bears seal of the College regarding its receipt by them on 21.02.2003 while copy filed with the counter affidavit of respondent Nos. 2 and 3 does not bear any such seal. Instead of creating doubt, this difference makes this Court believe the change of option dated 21.02.2003 as more genuine for no one will put his seal of receipt on the document kept for his record, the receipt is only given on the copy which is retained by the person who has submitted the document. In other words, the copy which was to be transmitted to the District Education Officer was naturally without seal of receipt while the concerned teacher obtained the seal showing that it was received by the Management of the College on 21.02.2003.

11) Respondent No. 4, the Management Committee of the College has not dated to come forward to file the counter affidavit if the respondent No. 5 had not submitted her change of option if February 2003. This circumstance further corroborates the stand taken by the respondent No. 5. In the circumstances, this Court has no hesitation to hold that the District Education Officer / District Inspector of Schools (respondent No. 3) has rightly rectified the mistake which he has committed in issuing the letter dated 19.11.2003.

12) For reasons as above, the writ petition is devoid of merits and is liable to be dismissed. The writ petition is dismissed. No order as to costs.

(P.C. Pant, J.)

Dt. 13th August 2004.
H.Negi